

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KEITH BEAUCHAMP,

Plaintiff,

OPINION AND ORDER

v.

11-cv-347-wmc

PAUL SUMNICHT, BELINDA
SCHRUBBE and KENNETH ADLER,

Defendants.

Plaintiff Keith Beauchamp, a prisoner at the Waupun Correctional Institution, alleges that defendants Paul Sumnicht, Belinda Schrubbe and Kenneth Adler were deliberately indifferent to his hernia. Beauchamp asks for leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. From the financial affidavit Beauchamp has submitted to the court, I conclude that he is unable to prepay the full fee for filing this lawsuit. Beauchamp has made the initial partial payment of \$156.57 required of him under § 1915(b)(1).

The next step is determining whether Beauchamp's proposed action is (1) frivolous or malicious, (2) fails to state a claim on which relief may be granted, or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Because Beauchamp passes this step, he will be allowed to proceed on his claims against all three defendants.¹

¹ When this case was filed on May 19, 2011, the computer assigned it to me, this court's magistrate judge, but under court practice, in the absence of a plaintiff's consent to magistrate judge jurisdiction, it was up to a district judge to grant or deny leave to proceed. When informed of this practice in July, 2011, Beauchamp filed a declination, so the computer reassigned this case to Judge Conley. *See* dkts. 6-7. Since then, the court has modified its practices slightly, so that if the court is granting leave to proceed on all claims against all defendants, then the magistrate judge can sign the order. That is what has happened here, which will allow this case to move forward to the next phase, which will require a response from the defendants followed by a telephonic scheduling conference.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). In his complaint, Beauchamp alleges, and the court assumes for purposes of this screening order, the following facts:

- Plaintiff Keith Beauchamp is an inmate at the Waupun Correctional Institution, (WCI) located in Waupun, Wisconsin.
- Defendant Paul Sumnicht is WCI's doctor and defendant Belinda Schrubbe is WCI's health services manager. Defendant Kenneth Adler is the committee chairman of the Health Services Bureau for the Wisconsin Department of Corrections.
- Beauchamp developed an incisional hernia after having open heart surgery in June 2006. The hernia was repaired in October 2007 but had to be redone on August 26, 2009. Although the second repair also failed, defendant Sumnicht delayed a third surgery, claiming other problems could arise because Beauchamp had vascular issues. Sumnicht also denied Beauchamp methadone for pain that had been recommended by the health services committee. Sumnicht and the committee continued to deny the hernia surgery even after Beauchamp informed them that his vascular issues had improved.
- On December 6, 2010, Beauchamp hit the hernia in his abdomen on the edge of his bed. He was seen on December 10, 2010, in the health services unit by Nurse Larson. After Larson talked to Schrubbe, Beauchamp was taken to the emergency room at the Waupun Memorial Hospital.
- That same day, the emergency room doctor recommended that Beauchamp be seen by the surgeon that had previously repaired his hernia. Sumnicht saw Beauchamp and refused to follow this recommendation because the health services committee had denied it.
- When Beauchamp asked to see a copy of the committee's denial, Sumnicht pulled out an old authorization form and said "it looks just like this."
- Beauchamp complained to defendant Schrubbe but she did not respond until he filed an inmate complaint. Schrubbe then responded by sending Beauchamp an old authorization form signed by defendant Adler on January 13, 2010, denying Beauchamp's hernia repair. (On March 3, 2010, Sumnicht agreed that a hernia

repair was not necessary.) When Beauchamp pointed out the mistake, Schrubbe wrote him on January 24, 2011 to tell him that there was no prior authorization form dated December 13, 2010, the day that he had seen Sunnicht.

- Beauchamp's hernia is the size of a basketball or a mixing bowl and it causes him constant pain.

OPINION

The Eighth Amendment prohibits prison officials from showing deliberate indifference to prisoners' serious medical needs or suffering. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). A "serious medical need" may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. *Johnson v. Snyder*, 444 F.3d 579, 584-85 (7th Cir. 2006). A medical need may be serious if it "significantly affects an individual's daily activities," *Chance v. Armstrong*, 143 F.3d 698, 702 (2d Cir. 1998), if it causes pain, *Cooper v. Casey*, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm, *Farmer v. Brennan*, 511 U.S. 825 (1994).

"Deliberate indifference" means that prison officials know of and disregard an excessive risk to inmate health and safety. *Farmer*, 511 U.S. at 837. Under this standard, Beauchamp's deliberate indifference claim has three elements:

- (1) Did Beauchamp need medical treatment?
- (2) Did defendants know that Beauchamp needed treatment?
- (3) Despite defendants' awareness of the need, did defendants fail to take reasonable measures to provide the necessary treatment?

Beauchamp claims that defendants failed to offer treatment for his hernia, which is causing him constant pain. At this early screening stage, Beauchamp's allegations that defendants Sunnicht and Adler denied him hernia repair surgery and pain medication are

sufficient to go forward. Although Beauchamp does not allege that Schrubbe was involved in the initial decision to deny Beauchamp hernia repair surgery, he does allege that she failed to respond reasonably to his complaint about not receiving the surgery. Although it is not exactly clear what Beauchamp complained about in his grievance to Schrubbe or the prison, Schrubbe became aware that Sunnicht's stated reason for denying Beauchamp surgery—that the committee had denied a prior authorization request—was false. Beauchamp claims that when he alerted Schrubbe to the fact that she had produced an old denial, she admitted that there was no denial form dated December 13, 2010 and still did nothing to help him receive care. Although tissue-thin, Beauchamp's allegations against Schrubbe pass muster under the court's lower standard for screening, and will allow this case to move forward to the scheduling and motions phase.

Beauchamp should be aware that to be successful on his claims, he will have to prove defendants' deliberate indifference, which is a high standard. Inadvertent error, negligence or gross negligence are insufficient grounds for invoking the Eighth Amendment. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996). In particular, it will be Beauchamp's burden to prove: (1) his hernia constituted a serious medical need that resulted in continuing, severe pain, which may require expert testimony rebutting medical evidence to the contrary; and (2) perhaps even more daunting, that defendants knew his condition was serious, could be relieved by additional medical treatment and deliberately ignored his need for this treatment. He will also have to prove that he had exhausted all remedies available to him through the prison system before bringing suit in this court.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Keith Beauchamp's request for leave to proceed on his Eighth Amendment deliberate indifference claims against defendants Paul Sumnicht, Kenneth Adler and Belinda Schrubbe is GRANTED.
- (2) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.
- (3) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- (4) Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.
- (5) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

Entered this 18th day of June, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge